Statement of Illinois State Senator Dave Sullivan
to the
Committee on Commerce, Science and Transportation
of the
United States Senate, Washington, DC
June 19, 2001

"Illinois Legislation to Establish Competition in Local Telecommunications Markets"

Thank you Chairman Hollings and members of the Committee.

I am State Senator Dave Sullivan. I represent Illinois Senate District 28 in the northwest suburbs of Chicago. I am pleased to appear here today at Senator Hollings' request to describe provisions of recent Illinois legislation related to competition in local telecommunications service markets.

During the past two years, I served as chairman of a telecommunications study committee in the Illinois Senate. This spring I was the chief Senate sponsor of revisions to the Illinois telecommunications act, which Governor Ryan is expected to sign into law in the next two weeks.

First, let me begin by telling you a little about Illinois. In the past couple years there have been many changes in Illinois. In particular two significant mergers, Ameritech Illinois, which is Illinois' largest telephone company, merged with SBC to form SBC/Ameritech and GTE merged with Bell Atlantic to form Verizon. Verizon is the next largest telephone company in Illinois. Therefore, in re-writing this Telecommunications Article, we were in many ways working with two new companies to Illinois.

In 1986, the Illinois General Assembly enacted a major rewrite of the Telecommunications Article of the Public Utilities Act, causing Illinois to become one of the first states in the nation legalizing local competition. US Speaker Denny Hastert was a major force in that rewrite when he was a member of the Illinois House. In 1992, the General Assembly revised the 1985 Act to permit the Illinois Commerce Commission (ICC) to implement alternative regulation plans, as opposed to the rate of return regulation. Thus far, Ameritech/SBC is the only ILEC to choose the alternative

regulation plan in Illinois. In 1997, Illinois passed SB700 (P.A. 90-185) in order to implement provisions of the Federal Telecommunications Act of 1996 (TA'96). The bill encouraged competition, and prohibited carriers from knowingly impeding the development of competition in any telecommunications service market. Other revisions included empowering the ICC to impose penalties of up to $30,000 per day for a violation of a Commission order pursuant to impeding competition.

Hence, Illinois has held a strong record of encouraging and attempting to develop competition in the local telecommunications market. In 1997, in particular, it was envisioned that competition would have developed at a much more rapid pace that it is currently developing. There is competition in the City of Chicago and in a small number of Chicago suburbs; however, outside of those particular localities, competition is lagging. There is certainly more competition in the business market than in the residential market in Illinois.

In addition to delayed competition, there was a recent outcry over the deterioration of service quality in Illinois. SBC/Ameritech has had many service quality difficulties, particularly for installation and repair. To be fair, SBC/Ameritech has worked very hard to meet their service standards set by their merger conditions. However there was clearly a problem, and their customers were outraged.

Together, these conditions made the climate ripe for a re-write.

Many of the telecommunications carriers proposed their view of a re-write. Ameritech believed the law contained unnecessary regulations and rules, which leads to less innovation, less investment and less benefit for consumers. They wanted to avoid micromanagement of the marketplace.

Many of the competing carriers wanted stronger enforcement provisions. They were satisfied with the current law, but did not believe it was being abided.

The General Assembly recognized that regulation should only be a surrogate for competition, and that the marketplace should oversee whenever possible. However looking at the current marketplace in Illinois, competition has not developed to the extent by which the marketplace can be

the sole determining factor of telecommunication prices with no regulation whatsoever.

Hence, the General Assembly conducted numerous hearings and negotiating meetings to develop an "intermediary" bill to help us reach the goal of accelerating competition in the local market. This bill, HB2900, is an attempt to meet that end.

By the time of our investigations last year and this -- the 12th year after local telecommunications competition was authorized in Illinois and the 5th year after passage of TA96 -- the total local market share of competitors in Illinois had grown to less than 10%. In the residential and small business markets, this share was under 3%. In addition, the number of competitors operating in Illinois diminished during the period; and the financial condition of those that remained deteriorated. This information, taken from FCC and investment analysts' reports, confirmed our common sense observations about the fundamental lack of competition in the market for basic telephone service. It also contrasted dramatically with information from New York and Texas where Section 271 market opening requirements had been met and competitors had won as much as a 20% share by the end of last year.

Five years ago, Illinois was a leader in the effort to introduce competition in local telecommunications markets. In June of 1996, the Illinois Commerce Commission concluded an investigation that resulted in the nation's first order requiring an incumbent local exchange carrier ("ILEC") to lease the elements of the public network to competing carriers both on an unbundled and on a bundled, or platform, basis. That Illinois order, like the federal Act passed four months earlier, established that the initiation and development of local competition depended on new market entrants having the right lease and use the ubiquitous local public network without discrimination and at a fair price.

Within 18 months after that June 1996 order, over 300 companies received certification to offer local exchange telecommunications services in Illinois. But competition and customer choice did not follow. Among those 300 certificated competitive local exchange carriers ("CLECs"), only 54 proceeded to the next step of filing tariffs for local service, and only about a dozen went on to provide service. Actual competitive choices have remained

limited to a few services in certain high-density areas of the State, offered primarily to high-volume users.

What happened in Illinois? Why didn't competition develop more completely? Was there something wrong in the premise that competition might begin in local markets the way it had in long distance -- through requirements that incumbent monopolies allow new market entrants nondiscriminatory access to lease and use the public network to provide services? Or, did the failure of local competition result from the failure to properly implement those requirements?

The New York Public Service Commission implemented an Illinois-type platform in the Verizon territory in December 1998. According to the U.S. Department of Justice, over 1,000,000 consumers were served by CLECs by the following July, most of whom were residential consumers served on the platform. And, the Texas Public Utility Commission ordered an Illinois-type platform in the Southwestern Bell territory in August 1999. The U.S. Department of Justice found that by September 2000, over 569,000 Texas consumers were served by CLECs, primarily through the use of the platform.

The successful introduction of competition in these two states using the framework of market-opening requirements developed in Illinois was critically important to our General Assembly's decision to explicitly codify those requirements.

There were many key provisions in the bill. The bill codifies several Ameritech/SBC obligations existing mostly under current federal laws, federal orders, and ICC orders. These obligations are all based upon making the ILECs network available to competing local exchange carriers (CLECs). The bill obligates Ameritech/SBC to make available its network to CLECs on reasonable and non-discriminatory terms. These provisions are not new. They have been mandated through orders and federal law. Several of them have been tied up in the Court systems. The intention is to accelerate the availability of the ILEC network thereby increase the opportunities for local competition. By placing these obligations in this bill, Illinois has clearly stated the legislature's intentions to open the market to

competition, and most importantly tied these obligations to the enforcement provisions of the bill.

In looking towards this competitive environment, the General Assembly declared all business services of a company under alternative regulation, "competitive". However, it protects small businesses by capping the rates of businesses with 4 lines and under until July 1, 2005 (the sunset date of the Act). Vertical services, excluding caller ID and call waiting, are also declared "competitive" as of June 1, 2003.

The bill also added four new per se impediments to competition which include 1) unreasonably refusing, providing inferior systems to or delaying access to the provisioning of OSS; 2) unreasonably failing to offer network elements that the ICC or FCC has determined must be offered on an unbundled basis; 3) violating the new obligations of incumbent carriers (Section 801); and 4) violating the order of the Commission concerning matters between carriers. These provisions are all tied to the enforcement provisions and the expedited complaint processes (rocket docket) of the bill.

This leads to the increased enforcement provisions of the bill. Under our current law, the penalties for violating the Act had not been revised since sometime in the 1920's. There was strong consensus that the $500-$2000 dollar penalties for violating the Act and the $30,000 penalty for impeding competition was out-dated, and clearly not high enough. In addition the penalty structure, which the ICC must abide by, was extremely cumbersome and overly restrictive. To date, no carrier had been fined of violating the Act.

Penalties under this bill may be assessed for up to 0.00825% of a carrier's intrastate gross revenues for each day of a violation. In the case of SBC/Ameritech, this penalty amount could be as much as $250,000 per day per violation. This coincides with FCC Chairman Powell's recent request to Congress for fines of up to $10 million per violation, noting that, for a multi-billion dollar company, fines of lesser amounts are meaningless as enforcement incentives.

The goal of our bill was to streamline this penalty process, provide the ICC with the teeth needed to have sufficient incentives for companies to comply with the Act, and to give ICC the tools needed to enforce the Act.

The bill increased the penalty amounts which carriers must pay for violating the Act or for impeding competition.
All penalties begin to accrue as soon as notice is provided to the carrier that they are in violation, and each day is considered a new violation.
Establishes certain mitigating factors for the Commission to consider in determining the amount of the penalty to be assessed upon a carrier
Injunctive Relief – Authorizes the ICC to seek injunctive relief without first having a hearing before the Commission to stop egregious conduct of a telecommunications carrier. Also, the bill allows the carriers to seek injunctive relief in circuit court against another carrier found by the Commission to be in violation of the Act, an order or a rule.
In intercarrier disputes, allows for the Commission to issue a cease and desist order from violating the Act, rules or regulations. Provides that the Commission can award damages, attorney's fees, and costs to any telecommunication carrier in violation.

CONSUMER PROVISIONS
Service quality has been deteriorating in Illinois, particularly with out of service and installation. I will note that Ameritech/SBC has recently made many strides in correcting the problems. However the public outcry was overwhelming, and the legislators did not want such a serious problem to occur again. This bill provides strong service quality standards such as requiring installation within 5 business days and restoring service within 24 hours. The bill also provides automatic credits to consumers for violations and in cases of extended violations, the company must provide alternative phone service.

The bill outlines three flat rate packages which companies under alternative regulation (Ameritech/SBC) must offer at a savings to customers. The packages basically outline a budget package, a package for average telephone users, and a high-speed package.

SUMMARY
In conclusion, Illinois' HB2900 is an attempt at accelerating competition in the local marketplace, by outlining specific incumbent carriers obligations for opening their networks to competitors, deeming business service competitive, streamlining the regulatory process, and giving the Illinois Commerce Commission more enforcement tools. Hopefully together these provisions will help to create a climate in which competition in the local market will thrive.